



HEARING PROCEDURE GUIDELINES

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HEARING PROCEDURE GUIDELINESTitle 18, Public Revenues
California Code of Regulations

Division 2. State Board of Equalization

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HEARING PROCEDURE GUIDELINES

**RULES OF PRACTICE
of the
STATE BOARD OF EQUALIZATION**

California Code of Regulations
Title 18. Public Revenues

Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

**ARTICLE 1. APPEALS FROM ACTIONS
OF THE FRANCHISE TAX BOARD**

5010. Definitions; Board Hearing Procedures; Manner of Filing.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on appeals filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) Two copies of an appeal to the Board from action by the Franchise Tax Board under the Administration of Franchise and Income Tax Laws or the Senior Citizens Property Tax Assistance Law, along with two copies of any supporting documents, shall be addressed and mailed to the Chief, Board Proceedings Division, State Board of Equalization in Sacramento, or deposited personally at the headquarters office of the Board in Sacramento. Upon receipt of the appeal, the Chief, Board Proceedings Division shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board in Sacramento, California.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 19045, 19046, 19072, 19085, 19087, 19324, 19331, 19332, 19343, 19344 and 20645, Revenue and Taxation Code.

History: 1. Repealer and deletion of former chapter 10 (sections 5001-5110) adopted 8-31-95; effective 12-30-95.
2. New chapter 10, article 1 and section adopted 8-31-95; effective 1-1-96.
3. Amendment of section heading and repealer and new section 11-19-97; effective 4-8-98.

5011. Timeliness.

An appeal shall be timely if it is mailed to or received at the headquarters Board Proceedings Division office of the Board within the time specified by the particular statute under which the appeal is taken. Unless expressly stated otherwise in the statute under which the appeal is taken, such statutory period shall be extended 5 days upon service by mail of the action of the Franchise Tax Board being appealed if the place of address is within California, 10 days if the place of address is outside California but within the United States, and 20 days if the place of address is outside the United States. In the absence of other evidence, the post-mark date or the date of

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delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 19045, 19072, 19084(b), 19085, 19087, 19324, 19331, 19343, and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.

5012. Form.

(a) The appeal shall be in writing and shall state the fact that an appeal is being made, the name of the taxpayer, the amounts and the years involved, the date when the notice of action was mailed by the Franchise Tax Board, the facts involved and the legal authorities relied on by the taxpayer, including relevant statutes and regulations. Any portion of the tax which the taxpayer concedes is owing shall be indicated in the appeal. The appeal shall be signed by the taxpayer or by the taxpayer's authorized representative.

(b) If the Franchise Tax Board's notice of action was directed to more than one taxpayer, each taxpayer desiring to contest it shall file an appeal on that taxpayer's own behalf, either separately or jointly with any other taxpayer, and each taxpayer shall satisfy all the requirements of this section in order for the appeal to be treated as filed by that taxpayer.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 19045, 19046, 19072, 19084, 19085, 19087, 19324, 19331, 19332, 19343, 19344, and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect made to Note filed 3-19-98.

ARTICLE 2. BUSINESS TAXES and TIMBER YIELD TAX

5020. Definitions; Board Hearing Procedures; Taxes Affected by This Article.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to petitions for redetermination (other than petitions and applications for administrative hearings pertaining to jeopardy determinations, which are subject to Article 3, beginning with Regulation 5030) and claims for refund under the following programs:

5020. (Contd.)

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

Ballast Water Management Fee

Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIII B;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge

Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge

Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Insurance Tax

California Constitution Article XIII, Section 28;
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Motor Vehicle Fuel License Tax

California Constitution Article XIX;
Revenue and Taxation Code Sections 7301-8405

Natural Gas Surcharge

Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Sales and Use Tax

(including State-administered local sales, transactions, and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

5020. (Contd.)

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431–437, 38101–38908

Tire Recycling Fee

Public Resources Code Sections 42860–42895;

Revenue and Taxation Code Sections 55001–55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101–50162

Use Fuel Tax

Revenue and Taxation Code Sections 8601–9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522, Revenue and Taxation Code.

History: 1. New article 2 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of article heading and subsections (a) and (b), new subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (b) and Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.

5021. Contents of Petition for Redetermination; Amendments.

(a) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. It shall be signed by the taxpayer, the taxpayer's authorized representative or any person directly interested. Any portion of the tax which the taxpayer concedes is owing by the taxpayer shall be indicated in the petition.

(b) The petition may be amended to state additional grounds at any time prior to the date the Board issues its order or decision on the petition.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

5021. (Contd.)

Reference: Sections 6561.5, 6814, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, and 60351, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.
3. Amendment of section heading and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5022. Claims for Refund.

Every claim for refund shall be in writing and shall state the specific grounds upon which the claim is founded. It shall be signed by the taxpayer, the taxpayer's authorized representative or any person directly interested. Although not required by statute to do so, the Board at its discretion may grant hearings on refund claims.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 6814, 6904, 8129, 9153, 12979, 30363, 32402, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, and 60523, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Changes without regulatory effect amending section and Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5023. Appeals Conference.

(a) The Board Proceedings Division shall schedule an appeals conference with the parties and a conference holder who is an Appeals Attorney or Appeals Auditor independent of the assessing Department. As requested by the taxpayer, an appeals conference may be held at the Sacramento headquarters of the Board, a district office, or by telephone. The appeals conference is an informal discussion of the relevant facts and applicable laws and regulations. The appeals conference is not an adversarial proceeding. Subpoenas are not issued for appeals conferences and testimony is not taken under oath; however, the conference holder will accept written statements made under penalty of perjury. The appeals conference is not recorded or reported by the conference holder. Taxpayers may arrange for the appeals conference to be recorded or reported. If the appeals conference is recorded or reported, the taxpayer shall make a copy of the tape or transcript available to the conference holder upon request.

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(b) Rescheduling and Postponements.

(1) Rescheduling. If there is a scheduling conflict for an appeals conference to be held at headquarters or by telephone, the appeals conference may be rescheduled to accommodate the parties. If a party has sufficient justification, a second rescheduling may be allowed. An appeals conference scheduled to be heard at a district office may be postponed as discussed in subdivision (b) (2), unless the party requests that the appeals conference be rescheduled to a different district office, to headquarters, or to a telephone appeals conference.

(2) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases. If a party requests a postponement of an appeals conference to be held at the district office within 15 days after the date of the notice of the appeals conference sent by the Board Proceedings Division and has sufficient justification for requesting the postponement, the Board Proceedings Division may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the notice of the appeals conference, and can demonstrate extreme hardship for requesting the postponement, the Board Proceedings Division may allow the postponement. While only one postponement may be granted, an appeals conference may be rescheduled as provided in subdivision (b)(1).

(c) Failure to Respond or Appear; Waiver.

(1) If the taxpayer fails to respond to the notice of the appeals conference sent by the Board Proceedings Division by the deadline stated in the notice, or responds to the notice but fails to appear for the appeals conference, the conference holder shall conduct the appeals conference as scheduled with the Department.

(2) A party may waive appearance at the appeals conference.

(d) Submission of Additional Documents.

(1) A party may submit additional documents to the Appeals Section at any time before or during the appeals conference. If a party submits additional documents, the other party shall have the opportunity to respond to the documents either at the appeals conference or within 15 days after the appeals conference.

(2) If at an appeals conference a party requests time to submit additional documents, the party shall have 15 days after the appeals conference to submit the documents. The other party shall have an additional 15 days to respond to the documents submitted. If there is sufficient justification, the conference holder may extend the time period for either party by an additional 15 days. Neither party shall be allowed any further additional time to submit or respond to documents unless approved by either the Assistant Chief Counsel of the Appeals Section or his or her designees.

(3) A conference holder may contact either or both of the parties after the appeals conference in order to obtain clarification of the issues, or additional information on the issues. However, the conference holder shall not rely on any

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information obtained after the appeals conference in deciding an issue against a party, without giving that party an opportunity to respond to the information.

(e) Within 90 days after the submission of any additional documents as authorized in subdivision (d) above, the conference holder shall issue a written report of his or her findings, called a Decision and Recommendation, copies of which shall be sent to all parties. If a party did not appear at the appeals conference, the Decision and Recommendation will be based on the information in the file and the information obtained from the other party. The Chief Counsel or his or her designee may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time shall be in writing and copies provided to all parties to the conference.

(f) If the taxpayer or the Department has requested a hearing prior to, or within 30 days of, the date that the Decision and Recommendation was mailed to the taxpayer, an oral hearing before the Board will be scheduled. If a hearing before the Board is not requested, official notice of the Board's action on the Decision and Recommendation will be mailed to the taxpayer.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.

Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, and 60522, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Amendment of section and Note 3-8-01; effective 7-6-01.

5024. Combined Claims for Refund on Behalf of Class of Taxpayers.

(Sales and Use Tax, including State-administered local sales, transactions, and use taxes.)

(a) This regulation applies only to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class shall establish:

(1) That it is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

5024. (Contd.)

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and the issues of fact which are common to all class members and those which are not, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority shall authorize the Board Staff to release to the representative any confidential information in the Board's files which may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) That the representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) That the representative can fairly and adequately protect the interests of each member of the class and that the representative's interests are not antagonistic to members of the class.

(7) When requested by the Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If the Board Staff finds that the claim is a proper combined claim it shall, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If the Board Staff finds that the claim is not a proper combined claim, it shall act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund shall be limited to the amount of tax overpayment by that member under the tax law pursuant to which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member shall be established and the representative or member shall furnish or make available to the Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to the Board Staff, the representative or member, shall be deemed to have failed to exhaust the administrative remedies.

5024. (Contd.)

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law pursuant to which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply with respect to persons who have not previously been notified of the claim, or who have notified the Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply with respect to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority: Section 15606(a), Government Code; Sections 7051, 7202(d), 7202(h)(4) and 7270, Revenue and Taxation Code.
Reference: Sections 6814, 6904 and 6932, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (b)(4),(c)-(c)(2) and (d)(1) 11-19-97; effective 4-8-98.

ARTICLE 3. HEARINGS ON JEOPARDY DETERMINATIONS

5030. Definitions; Board Hearing Procedures; Taxes Affected by this Article.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and applications filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to jeopardy determinations and jeopardy assessments of private railroad cars issued under the following programs, and provides two alternative means to challenge a jeopardy determination or jeopardy assessment: filing a petition for redetermination or reassessment and stay of collection pursuant to Regulation 5031; and filing an application for an administrative hearing pursuant to Regulation 5032:

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;

Revenue and Taxation Code Sections 32001-32556

Ballast Water Management Fee

Public Resources Code Sections 71200-71271;

Revenue and Taxation Code Sections 44000-44008, 55001-55381

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;

Revenue and Taxation Code Sections 43001-43651

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5030. (Contd.)

Cigarette and Tobacco Products Tax
California Constitution Article XIII B;
Revenue and Taxation Code Sections 30001–30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001–60709

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001–43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001–45984

Motor Vehicle Fuel License Tax
California Constitution Article XIX;
Revenue and Taxation Code Sections 7301–8404

Natural Gas Surcharge
Public Utilities Code Sections 890–900;
Revenue and Taxation Code Sections 55001–55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001–43651

Oil Spill Response, Prevention, and Administration Fees
Revenue and Taxation Code Sections 46001–46751

Private Railroad Car Tax
Revenue and Taxation Code Sections 11201–11702

Sales and Use Tax
(including State-administered local sales, transactions, and use taxes)
Revenue and Taxation Code Sections 6001–7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 38101–38908

Tire Recycling Fee
Public Resources Code Sections 42860–42895;
Revenue and Taxation Code Sections 55001–55381

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101–50161

Use Fuel Tax
Revenue and Taxation Code Sections 8601–9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

5030. (Contd.)

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

History: 1. New article 3 and section filed 12-29-95; effective 1-1-96.
2. Amendment of subsections (a) and (b), new subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (b) and Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.

5031. Petition for Redetermination or Reassessment and Stay of Collection Activities.

The person against whom a jeopardy determination or a jeopardy assessment is made may petition for redetermination or reassessment thereof if the person, within 10 days after service of the notice of the jeopardy determination or jeopardy assessment, files a petition for redetermination or reassessment and within that period deposits with the Board such security as the Board deems necessary to secure compliance with the tax law or laws pursuant to which the determination is made or to insure payment of the amount due for the assessment. The petition shall be in writing and shall state the specific grounds upon which it is based. The filing of the petition and depositing of the required security shall stay further collection activities until such time as the determination or assessment becomes final. Board Staff review of such petitions shall be governed by the procedures set forth in Article 2, Regulation 5023.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 11354, 30243, 30243.5, 32312, 32313, 38433, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5032. Application for Administrative Hearing.

(a) Within 30 days after service of the notice of jeopardy determination or jeopardy assessment, the taxpayer against whom a jeopardy determination or jeopardy assessment has been made may, with or without complying with the requirements of Regulation 5031, apply for an administrative hearing.

(b) The taxpayer may apply for such a hearing for one or more of the following purposes:

(1) to establish that the determination or assessment is excessive;

(2) to establish that the sale of property that may have been seized after issuance of the jeopardy determination or jeopardy assessment or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person;

(3) to request the release of all or a part of the seized property to the person;

(4) to request a stay of collection activities.

(c) The application shall be in writing and shall state the specific factual and legal grounds upon which it is founded.

(d) No security need be posted to obtain this hearing. Unless the person complies with the provisions of Regulation 5031 relating to the deposit of security, the filing of the petition shall not operate as a stay of collection activities except sale of the property seized.

(e) Upon a showing of reasonable cause for failure to file a timely petition for administrative hearing, the Board may allow a late filing of the petition and grant petitioner an administrative hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a), (b)(1)-(3) and (e) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5033. Effect of Filing Application.

With respect to a jeopardy determination or a jeopardy assessment, the seized property shall not be sold without the consent of the owner during the first 30 days after service of the notice of jeopardy determination or jeopardy assessment nor

5033. (Contd.)

while a timely application for an administrative hearing is pending. The storing of the property during the period the application is pending shall be at the applicant's expense.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 6538, 6538.5, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332, and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5034. Administrative Hearing.

An administrative hearing shall be scheduled promptly after the filing of the application. The administrative hearing shall be conducted as an appeals conference, following the procedures set forth in Article 2, Regulation 5023. When an oral hearing before the Board is requested, the hearing shall be scheduled as soon as practicable. The Board shall give the applicant at least 10 days' notice of the time and place of the hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section, and Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5035. Administrative Hearing Order.

The Appeals Attorney or Appeals Auditor may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property shall not be sold; that the property, or a portion

5035. (Contd.)

thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section, and Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5036. Notices.

Any notice given pursuant to this article shall be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

ARTICLE 4. STATE ASSESSEES and
PRIVATE RAILROAD CAR COMPANIES

5040. Definitions; Board Hearing Procedures; Hearings on Petitions for Reassessment of Unitary or Nonunitary Values; Correction of Allocated Values of Public Utilities and Reassessment of Private Railroad Cars; Contents of Petitions; Assessment Factor Hearings.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

5040. (Contd.)

(b) This Article applies to petitions for reassessment of unitary or nonunitary values, petitions for correction of allocated values of public utilities, and petitions for reassessment of private railroad cars and sets forth the procedures applicable to state assesseees and private railroad car taxpayers in making oral and written presentations at Assessment Factor Hearings.

(c) The Board shall hear petitions as follows:

(1) The Board shall hear petitions for reassessment of unitary or nonunitary values between the date of receipt of a timely filed petition for reassessment and December 31 and render its decisions on individual petitions no later than December 31 each year.

(2) The time for filing of and hearing and decision on petitions for correction of allocated values of public utilities shall be as required by Sections 746, 747, 748, and 749 of the Revenue and Taxation Code.

(3) The time for filing of and hearing and decision on petitions for reassessment of private railroad cars shall be as required by Sections 11338, 11339, 11340, and 11341 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.
Reference: Sections 110, 721, 741, 742, 743, 744, 746, 747, 748, 749, 11251, 11291, 11293, 11294, 11336, 11338, 11339, 11340, 11341 and 11353, Revenue and Taxation Code.

History: 1. New article 4 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section, and Note 11-19-97; effective 4-8-98.

5041. Filing and Contents of Petition.

(a) Board Staff shall send a notice to each assessee setting forth the amount of assessed value and the date by which a petition for reassessment may be filed.

(b) The appropriate Board Staff capitalization rate study and final calculations of the value indicators shall be made available, between the time that the Board values the subject property and the deadline for filing a petition, to any petitioner submitting a written request therefor to the Chief, Valuation Division, State Board of Equalization.

(c) The petition shall be in writing and shall state the name of the petitioner, the petitioner's opinion of value, and the precise elements of the Board's valuation to be contested, and shall include petitioner's appraisal reports, financial studies and other materials relevant to value. Petitioner's appraisal reports, financial studies and other materials relevant to value shall not be presented as evidence at the hearing unless provided to the Chief, Board Proceedings Division at the time of filing of the petition.

5041. (Contd.)

(d) The petition shall also indicate whether an oral hearing is desired and whether written findings and decision are requested. If requested in the petition, the Board shall issue written findings and decision. The petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and mailed to the Chief, Board Proceedings Division, State Board of Equalization at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento.

(e) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, Board Proceedings Division and a copy shall be sent to the petitioner.

(f) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, Board Proceedings Division.

(g) The Chief, Board Proceedings Division shall distribute the petition and related documents, the staff analysis and recommendation, and the petitioner's response, if any, to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(h) A reasonable extension of time for filing materials under (c), (e) or (f) above may be granted by the Chief, Board Proceedings Division for reasonable cause. The request for an extension of time shall be submitted in writing no later than 5 o'clock p.m. of the last business day before the date set for filing the materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, Board Proceedings Division to the person submitting the documents.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.

Reference: Sections 741, 742, 743, 746, 747, 748, 11338, 11339, 11340, and 11353, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of section heading, repealer and new section and amendment of Note 11-19-97; effective 4-8-98.

3. Amendment of subsection (h) 7-29-99; effective 10-31-99.

4. Change without regulatory effect amending subsection (a) filed 6-11-01.

5042. Timeliness of Filings.

A petition, staff analysis and recommendation, or response to staff analysis and recommendation shall be timely if it is mailed to or received by the Chief, Board Proceedings Division at the headquarters office of the Board in Sacramento within the time specified by these rules. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing a petition falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day. If the petition is not timely, it shall be dismissed. If it is incomplete, as through omission of any of the requirements specified in Regulation 5041, it may be dismissed.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 11338, 11339 and 11353, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, and section 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending section filed 6-11-01.

5043. Assessment Factor Hearings.

The Board may annually conduct hearings to be called “Assessment Factor Hearings” to receive public testimony on issues relating to capitalization rates and other factors affecting values of California state-assessed property and private railroad cars. No later than 30 days prior to the hearing, state assessees and private railroad car taxpayers, or other persons wishing to be listed on the agenda, shall notify the Chief, Board Proceedings Division if they intend to make oral presentations at the hearing. Testimony of persons who do not notify the Chief, Board Proceedings Division as set forth above will be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessees or private railroad car taxpayers may submit written presentations to the Chief, Board Proceedings Division no later than the date of the hearing.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.

Reference: Sections 110, 721, 11251, 11291, 11292, 11293 and 11294, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 3-8-01; effective 7-6-01.

ARTICLE 5. TAXABLE PROPERTY
OF A COUNTY, CITY, OR MUNICIPAL CORPORATION

5050. Definitions; Board Hearing Procedures; Application for Review, Equalization, and Adjustment.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on applications filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) A county, city, city and county or municipal corporation may secure the review, equalization and adjustment of an assessment of its lands and improvements by the Board in pursuance of Section 11 of Article XIII of the Constitution by application therefor made in accordance with this Article and Section 1840 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 11, Article XIII, California Constitution; Section 1840, Revenue and Taxation Code.

History: 1. New article 5 and section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.

5051. Form of Application.

The application shall be made in writing to the Board and shall be authorized by the governing body of the county, city, city and county or municipal corporation seeking relief. The official document authorizing the application shall be included. The application need not be under oath. The application shall show the facts claimed to require action by the Board, and shall include or be accompanied by a statement of legal authorities, including relevant statutes and regulations.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 3-8-01; effective 7-6-01.

5052. Time and Place of Filing; Copies.

(a) If the assessment objected to is one made during the regular period for such assessments, the application shall be filed with the Chief, Board Proceedings Division of the Board at its headquarters office in Sacramento on or before the third Monday in July of the year in which the assessment is made, or within two weeks after the completion of the local roll containing the assessment, whichever is later.

5052. (Contd.)

The regular assessment period is from January 1 to and including July 1 or to such later date for completion of the roll as may be authorized by the Executive Director of the Board. If the assessment objected to is one made outside the regular period for such assessments, the application shall be filed within 60 days from the date the tax bill is mailed to the assessee.

(b) A copy of the application, together with any separate statement of legal authorities, including relevant statutes and regulations, shall be filed by the applicant with the assessor whose assessment is questioned and with the governing body of the tax agency. A statement of the fact of filing with the assessor and the taxing agency shall be endorsed upon the application.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsection (a) 11-19-97; effective 4-8-98.

5053. Answer to Application.

Prior to the hearing by the Board, the assessor whose assessment is questioned and the taxing agency shall file a written answer to the application and a statement of legal authorities, including relevant statutes and regulations. The failure to file an answer shall not constitute a default or an admission of any matters set forth in the application. Copies of the answer and of the legal authorities shall be mailed to the applicant. A statement that mailing was made shall be endorsed upon the answer.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.
3. Amendment of section 3-8-01; effective 7-6-01.

5054. Prehearing Conference.

A prehearing conference shall be held for each application for which a hearing is to be held under these regulations. The conference shall be conducted at the headquarters office of the Board in Sacramento at a time to be arranged by Board Staff suitable for the parties or their representatives. A Board Attorney shall preside at the conference. The purpose of this procedure is to clarify and define the issues, examine the application and answer for necessary amendments, place the case in focus so that the defined and precise issues may be resolved as quickly as possible, give notice of matters not necessarily revealed by the application and answer, enter

5054. (Contd.)

into stipulations on matters on which agreement has been reached by the parties, and arrange for the exchange of copies of appraisal reports and exhibits prior to the hearing.

Board Staff shall prepare a concise and descriptive statement of the nature of the case and summary of the matters agreed upon or admitted at the conference. This statement shall be placed in the record at the commencement of the hearing.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.

5055. Notice of Hearing.

Notice of hearing shall be sent in accordance with the procedures set forth in Article 7, Regulation 5076(b). The notice shall contain a statement that (subject to the limitations of Sections 3(b) and 11, Article XIII of the Constitution) the Board is required to find the full cash value of the property which is the subject of the hearing and that this finding may exceed the value on which the assessment is based.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 3(b) and 11, Article XIII, California Constitution; and Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, repealer and new section, and amendment of Note 11-19-97; effective 4-8-98.

5056. Board Appraised Property.

If a property that has been appraised by Board Staff becomes the subject of a proceeding under this Article, both parties to the proceeding shall be informed of the fact that the appraisal has been made. Each party, upon request, shall have access to the appraisal records. Either party or the Board Staff may call the appraiser or the appraiser's supervisor as a witness and may offer the appraisal records as an exhibit. A party desiring to call the appraiser or the appraiser's supervisor as a witness shall, at least ten days prior to the hearing, notify the Chief, Board Proceedings Division, of its intention to call such witness.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.

ARTICLE 6. PROPERTY TAX
WELFARE EXEMPTION CLAIM REVIEW PROCEDURE**5060. Definitions; Board Hearing Procedures; Application.**

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) The provisions of this section shall apply to property tax welfare exemption claims received by the Board pursuant to Section 254.5 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 254.5 and 270, Revenue and Taxation Code.

History: 1. New article 6 and section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending article heading and section filed 3-19-98.

5061. Supplementary Material; Application for Additional Time to Submit Supplementary Material.

(a) Where, after analysis of a claim, Board Staff determines that the requirements of Section 214 through Section 214.14, inclusive, of the Revenue and Taxation Code have not been met for any of the following reasons, indicated on the Board's annual welfare exemption finding sheet to the claimant:

- (1) Fund Raising Purposes (Coded—F.R.P.);
- (2) Religious Aspect Not Apparent (Coded—R.N.A.);
- (3) Not Exclusively Used (Coded—N.E.U.);
- (4) Charitable Aspect Not Apparent (Coded—C.N.A.);
- (5) Vacant, Unused Property (Coded—V.U.P.);

a notice shall accompany the finding sheet information sent to the claimant that the claimant has 30 days from the date of the notice to submit supplementary material supporting the claim.

(b) Upon written application filed within the noticed time limit, the claimant shall be granted an additional 30 days to submit the material.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 214, 214.01, 214.02, 214.05, 214.1, 214.2, 214.3, 214.4, 214.5, 214.6, 214.7, 214.8, 214.9, 214.10, 214.11, 214.13, 214.14, 254.5 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.

5062. Petition Time Limit.

Upon receipt of supplementary material, the exemption officer shall conduct a complete review of the claim. A notice, informing the claimant that the supplementary material provides or does not provide a basis for changing the original finding shall be issued. A no-change notice shall advise the claimant that it has 30 days from the date of the notice to petition the Board for hearing on the claim.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 254.5 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.

5063. Hearing Petition: Contents.

(a) The petition for hearing shall be in writing and addressed to the Chief, Board Proceedings Division. It shall state all of the grounds upon which qualification is claimed, and shall include all documents the petitioner wishes the Board to consider in deciding the petition. The petition shall indicate whether an oral hearing is desired, and if so, claimant's estimate of the time necessary therefor. If requested in the petition, and in the event that the Board grants a hearing and hears the matter, the Board shall issue written findings and decision. The petition shall be signed by an authorized representative of the claimant and shall be mailed to the Chief, Board Proceedings Division of the State Board of Equalization at Sacramento, California, or shall be deposited personally at the headquarters office of the Board's office at Sacramento. The Chief, Board Proceedings Division may require the representative to demonstrate the representative's authority to represent the claimant.

(b) No later than 30 days after the date that the petition for hearing is received pursuant to subdivision (a), the Board Attorney assigned to the case shall schedule a meeting or telephone conference, at a time suitable for the petitioner and the assessor, for the purpose of establishing the agreed upon and contested facts and the legal issues under consideration.

(c) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, Board Proceedings Division and a copy shall be sent to the petitioner.

(d) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, Board Proceedings Division.

5063. (Contd.)

(e) The provisions of subdivisions (b) of Regulation 5075 shall apply to materials submitted pursuant to (a), (c) or (d) of this regulation.

(f) The Board Staff shall also prepare a summary for Board hearing, which shall be a neutral statement of the relevant facts, the issues, and the positions of the department and the claimant. The summary for Board hearing shall not be written by any staff person or persons who reviewed the claim and determined it should be denied, or who participated in the preparation of the staff analysis and recommendation.

(g) The Chief, Board Proceedings Division shall distribute the petition and related documents, the staff analysis and recommendation, the petitioner's response, if any, and the summary for Board hearing to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(h) A reasonable extension of time for filing materials under (c) or (d) above may be granted by the Chief, Board Proceedings Division, upon a showing of reasonable cause. The request for an extension of time shall be submitted in writing before the scheduled due date of any materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, Board Proceedings Division to the person submitting the documents.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 254.5 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment adding subsection (a) designator, amending newly designated subsection (a), and adding new subsections (b)–(h) 11-19-97; effective 4-8-98.
3. New subsection (b), subsection relettering, and amendment of newly designated subsections (e) and (h) 3-8-01; effective 7-6-01.

5064. Oral Hearings; Waiver.

The Board shall schedule an oral hearing on a Welfare Exemption petition. The petitioner shall receive 60 days notice of the hearing date and time, and the procedures shall be governed by Article 7. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written petition.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 254.5, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 7-29-99; effective 10-31-99.

ARTICLE 7. GENERAL BOARD HEARING PROCEDURES

5070. Definitions.

The following definitions apply to this chapter:

(a) “Appeals Staff,” “Appeals Attorney” or “Appeals Auditor” means and includes an employee of the Board of Equalization assigned to the Appeals Section of the Legal Division.

(b) “Board” means the members of the State Board of Equalization meeting as a body.

(c) “Board Staff” or “Board Attorney” means and includes an employee of the Board of Equalization charged with a responsibility under this Chapter or appearing before the Board in any proceeding.

(d) “Brief” means a written document that includes discussion of, or citations to, laws or regulations or an argument of how the laws or regulations apply to the facts supporting the party’s position. Notwithstanding this definition, affidavits or declarations submitted by the parties and documents produced by the Appeals Section, including, but not limited to, a Hearing Summary or Final Action Recommendation, are not briefs.

(e) “Delivery Service” means any delivery service provided by a trade or business if such service is available to the general public and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was given to the trade or business for delivery.

(f) “Department” includes the Property Taxes Department, Sales and Use Tax Department, Special Taxes Department, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board.

(g) “Party” means and includes: the taxpayer and the taxpayer’s representative; and the Department as defined in this section.

(h) “Petition” means and includes any petition, including a petition for redetermination; claim, including a claim for refund; appeal from an action of the Franchise Tax Board on a claim for refund, deficiency assessment, or jeopardy assessment; request for administrative hearing; petition for reconsideration; petition for reconsideration of successor liability; and any other matter for administrative decision or adjudication by the Board in any program listed in Regulation 5071. Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (1) disagrees with an assessment and/or determination or (2) requests a hearing, shall be accepted as a petition for redetermination. Staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.

5070. (Contd.)

(i) “Tax” means and includes any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board.

(j) “Taxpayer” includes a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing or who is a person directly interested in any matter before the Board under any of the programs listed in Regulation 5071.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, ~~44003~~, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19335, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New article 7 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a)–(c), (e) and (g), new subsections (h) and (i), and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5071. General.

(a) This article applies to Board hearings under any of the following programs:

Administration of Franchise and Income Tax Laws
Revenue and Taxation Code Sections 18401–19802

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001–~~34557~~

Ballast Water Management Fee
Public Resources Code Sections 71200–71271;
Revenue and Taxation Code Sections 44000–44008, 55001–55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001–43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001–30481

Diesel Fuel Tax
Revenue and Taxation Codes Sections 60001–60709

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Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001–41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001–40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001–43651

Insurance Tax
California Constitution Article XIII, Section 28;
Revenue and Taxation Code Sections 12001–13170

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001–45984

Motor Vehicle Fuel License Tax
California Constitution Article XIX, Sections 1–9;
Revenue and Taxation Code Sections 7301–8405

Natural Gas Surcharge
Public Utilities Code Sections 890–900;
Revenue and Taxation Code Sections 55001–55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001–43651

Oil Spill Response, Prevention, and Administration Fees
Revenue and Taxation Code Sections 46001–46751

Private Railroad Car Tax
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201–11702

Publicly Owned Property
California Constitution Article XIII, Section 11(g);
Revenue and Taxation Code Sections 1840 and 1841

Sales and Use Tax
(including State-administered local sales, transactions, and use taxes)
Revenue and Taxation Code Sections 6001–7279.6

Senior Citizens Homeowners and Renters Property Tax Assistance
Revenue and Taxation Code Sections 20501–20646

State-Assessed Property
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 721–868, 4876–4880, 5011–5014

Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431–437, 38101–38908

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Tire Recycling Fee

Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-~~50162~~

Use Fuel Tax

Revenue and Taxation Code Sections 8601-9355

Welfare Exemption

California Constitution Article XIII, Section 4(b);
Revenue and Taxation Code Sections 214-214.14, 254.5, 270-272

(b) This article sets forth rules of general application which apply to hearings before the Board in all of the programs listed above. Where the procedure for a specific program differs from the general rule, the specific program and procedure are described in a subsection of the general rule. In addition, prior articles include regulations which address specific procedures for appeals from the Franchise Tax Board (Article 1), Business Taxes and Timber Yield Tax (Article 2), Hearings on Jeopardy Determinations (Article 3), State Assesseees and Private Railroad Car Companies (Article 4), Taxable Property of a County, City, or Municipal Corporation (Article 5), and Property Tax Welfare Exemptions (Article 6).

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 41071, 41128, 43501, ~~44003~~, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (a) and (b), new subsection (c) and amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (a) and Note 3-8-01; effective 7-6-01.

5072. Quorum.

Except as otherwise provided in this Chapter, any three members of the Board present at a meeting shall constitute a quorum. When a member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the

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Political Reform Act (Government Code Sections 81000, et seq.) the member may not be counted for a quorum. If a deputy of the State Controller is not authorized by Section 7.9 of the Government Code to participate because the matter before the Board is a Constitutional matter, the deputy of the State Controller may not be counted for a quorum.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section and Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5073. Representation at Hearings and Powers of Attorney.

(a) Taxpayers may be represented at all levels of review by any person of the taxpayer's choosing, including, but not limited to an attorney, accountant, bookkeeper, employee or business associate.

(b) Except as provided in subsection (c) below, the Board shall recognize all representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter.

(c) The Board, or Board Staff, may require a party to complete a Power of Attorney on a form provided by the Board. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters.

(d) The Power of Attorney form shall include the following information: taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address; the name, address, and telephone and FAX number of the appointed representative(s); the tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted; a statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation; the time period during which the Power of Attorney shall be in effect; the signature(s) and title of all affected taxpayers and the date of signature.

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Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (b)-(d) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (d) and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5074. Consolidation for Hearing or Decision.

Upon the request of the Board or the Board Staff or any party, any matters pending before the Board may, at the discretion of the Board or the Board Staff, be consolidated for hearing or decision if the Board finds that the facts and issues are similar and no substantial right of any party will be prejudiced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5074.5. Timeliness of Documents.

A document shall be timely if it is mailed to or received at the headquarters office of the Board within the time specified by the particular statute or regulation under which the document is filed. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in Article 7, Regulation 5070, shall be considered the mailing date. If the last day for mailing or delivering the document falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

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Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 7-29-99; effective 10-31-99.
2. Change without regulatory effect amending Note filed 6-11-01.

5075. Briefs.

(a) Briefs are required in appeals of decisions of the Franchise Tax Board and are optional in all business taxes matters before the Board. This regulation applies to all briefs filed with the Board, except that the more specific requirements of Regulation 5075.1 apply to appeals from actions of the Franchise Tax Board. In property tax matters, the petition, the staff analysis, the petitioner's response to the staff analysis, and, where appropriate, a non-party brief submitted pursuant to subdivision (h), are briefs within the meaning of this regulation, and only these documents will be accepted for filing and distribution; however, where circumstances warrant, the Board may request that additional briefs be filed, and will set the briefing schedule. Except in those circumstances, additional briefs are not accepted in property tax matters.

(b) General. Any brief filed with the Board shall be filed within the time required by these regulations or, if no time is so specified, as directed by the Board or the Chief, Board Proceedings Division. All briefs shall be addressed and mailed to the Chief, Board Proceedings Division, at the headquarters office of the State Board of Equalization at Sacramento, or deposited personally at the headquarters office of the Board in Sacramento. In addition, all briefs shall be mailed or personally delivered to the other parties. No brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8½" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch (CPI), or the equivalent, excluding exhibits. Exceptions to the 30 page limit may be granted prior to the deadline for filing the brief by the Chief, Board Proceedings Division, upon written application that establishes reasonable circumstances that justify the necessity for additional pages. In the event the brief does not conform to the form and page limit specified above, the submitted brief may be returned by the Chief, Board Proceedings Division. The party shall be given 10 days to comply with the form and page limit. Failure to comply within 10 days shall constitute a waiver of the opportunity to submit the brief.

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(c) Opening Briefs. Any party may file an opening brief. An opening brief shall contain, along with any other information required by these regulations, a statement of the issue(s), a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief, Board Proceedings Division no later than 45 days before the Board hearing.

(d) Reply Briefs. A reply brief is a brief that is filed by any party in response to any opening brief and shall contain a statement of the issue(s), including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and presentation of any affirmative defenses. Reply briefs shall be filed with the Chief, Board Proceedings Division no later than 30 days before the Board hearing.

(e) Briefs Filed by Unrepresented Taxpayer. A taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.

(f) Post-Hearing Briefs. The Board may permit the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a hearing. However, any post-hearing submissions shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.

(g) Extensions of Time. A reasonable extension of time for the filing of briefs may be granted by the Chief, Board Proceedings Division, upon a showing of extreme hardship. The request for an extension of time shall be submitted in writing before the scheduled due date of any brief.

(h) Non-Party (Amicus) Briefs. A pre-hearing brief or letter from a non-party shall be filed with the Chief, Board Proceedings Division no later than 30 days before the Board hearing, and the parties may file responses with the Chief, Board Proceedings Division no later than 15 days before the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in (b) above. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(i) Additional Briefing. In extraordinary situations, the Board or the Board Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested brief shall be filed within the time specified by the Board or Board Staff.

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Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a)–(d), new subsections (e), (h) and (i); subsection relettering and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (b) and (c) and amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5075.1. Appeals from Actions of the Franchise Tax Board: Briefing Schedule.

(a) Appeals from Actions of the Franchise Tax Board: General; Non-party (Amicus) Briefs. In all appeals from actions of the Franchise Tax Board, other than appeals contesting a finding of jeopardy status, the parties shall adhere to the following schedules and procedures for filing briefs. In jeopardy status appeals, Board Staff shall notify the parties of the schedule and procedure for filing briefs. Non-party (Amicus) briefs or letters may be filed up to and until the time that the briefing period, established pursuant to this Rule, for both the taxpayer and the Franchise Tax Board has ended. Either party may file a response to the non-party brief or letter no later than 30 days prior to the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. The response shall not extend the briefing period.

(b) Appeals from Actions of the Franchise Tax Board: Opening and Reply Briefs.

(1) If the appeal is filed within the statutory period but is incomplete, the taxpayer shall be granted 90 days from the date of the acknowledgment letter from the Board within which to perfect the appeal by filing a complete opening brief as required by these regulations. A copy of all such materials shall also be mailed by the taxpayer to the Franchise Tax Board. The appeal is subject to dismissal if it is not perfected within the 90-day period.

(2) After filing of an appeal is perfected, the Franchise Tax Board shall be allowed 90 days from the date of the Chief, Board Proceeding Division's letter acknowledging receipt of the taxpayer's complete appeal in which to file a reply brief in support of its position. The Franchise Tax Board shall mail a copy of the reply to the taxpayer.

(c) Appeals from Actions of the Franchise Tax Board: Supplemental Briefs.

(1) The taxpayer may file a supplemental brief, addressing only the points of disagreement the taxpayer has with the Franchise Tax Board's reply brief, within 30

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days from the date of the Board's letter acknowledging receipt of the Franchise Tax Board's reply brief. The taxpayer shall mail a copy of the supplemental brief to the Franchise Tax Board. This brief shall ordinarily complete the briefing.

(2) In extraordinary circumstances, the Franchise Tax Board may be permitted to file a supplemental brief, addressing only the points of disagreement the Franchise Tax Board has with the taxpayer's supplemental brief, but only pursuant to previous written permission from Board Staff. Any such permissive supplemental briefs shall be filed within 30 days after receipt of permission to file. If the Franchise Tax Board is allowed to file a supplemental brief, the taxpayer shall have 30 days after receipt of the brief is acknowledged by the Board to file a response. This response shall then complete the briefing.

(d) Appeals from Actions of the Franchise Tax Board: Extensions of Time.

(1) At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of briefs may be granted upon a showing of extreme hardship or when the parties agree in writing to an extension of time and the request or agreement is filed with the Board Proceedings Division before the scheduled due date of any brief.

(2) Where either party fails to meet due dates, with the exception of failure to perfect as described above in Subsection (b)(1), the briefing of the appeal shall end and the Board shall take the matter under submission for decision on the existing written record.

(e) Additional Briefing or Evidence. If the Board or Board Staff, in either's discretion, determines that insufficient briefing or evidence has been provided, the Board or Board Staff may request additional briefing or evidence from either party. A request for additional briefing or evidence may be made during the briefing period or after the briefing period is ordinarily complete. Any such requested briefs or evidence shall be submitted within the time specified by the Board or Board Staff. If additional briefing from the Franchise Tax Board is requested by Board staff, the taxpayer shall have 30 days after receipt of the brief is acknowledged by Board staff to file a final response.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19405, 19406, 19047, 19048, 19072, 19084, 19085, 19087, 19331, 19332, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of subsections (b)(1)–(2), (c)(2) and (d)(1)–(2), new subsection (e) and amendment of Note 11-19-97; effective 4-8-98.

3. Amendment of subsection (e) 3-8-01; effective 7-6-01.

5076. Notice of Board Hearing; Waiver or Postponement of Hearing; Failure to Respond to Hearing Notice or to Appear for Hearing; Place of Hearing.

(a) This regulation applies to all Board hearings, except that the more specific provisions of Regulation 5076.1 apply to appeals from actions of the Franchise Tax Board.

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(b) Notice of Board Hearing; Waiver. Board Staff shall send notice of the Board hearing to the taxpayer and the Department at least 60 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 60-day notice period may be waived upon agreement among the parties and the Chief, Board Proceedings Division. If the 60-day notice period is waived, the Chief, Board Proceedings Division shall modify the briefing schedule set forth in Regulation 5075. The taxpayer shall respond to the hearing notice by indicating: that the taxpayer will appear at the time and place noted; or, that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(c) Postponement of Board Hearing. One postponement of a hearing may be granted upon agreement of the parties if the taxpayer or the Department requests it by the deadline stated in the hearing notice and provides sufficient justification for the postponement, and the parties commit to a specific subsequent hearing date. A postponement requested after response to the hearing notice shall be granted upon agreement of the parties upon a showing of extreme hardship. At the Board's discretion, a postponement may be granted.

(d) Removal from Calendar. The Chief, Board Proceedings Division, may remove hearings or related proceedings from the hearing calendar for reasonable cause.

(e) Failure to Respond or Appear. If the taxpayer fails to respond to the hearing notice by the deadline stated in the notice, or responds to the hearing notice but fails to appear for the hearing on the date and time stated in the notice, the case shall be submitted to the Board for decision without oral hearing and on the basis of the written record. At the Board's discretion, exceptions shall be made upon a showing of extreme hardship.

(f) Place of Hearing. Except for a hearing on a property tax petition, a hearing involving a taxpayer or taxpayer's representative residing in the Southern part of the State shall ordinarily be held in the Los Angeles area. Other hearings and hearings on property tax petitions shall ordinarily be held in Sacramento. At its discretion, the Board may hold hearings at other locations.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5076.1. Appeals from Actions of the Franchise Tax Board: Voluntary Dismissal; Negotiations; Deferrals; Submission for Decision; Oral Hearings.

(a) Appeals from Actions of the Franchise Tax Board: Voluntary Dismissal; Negotiations. An appeal from an action by the Franchise Tax Board may be dismissed at any time at the written request of the taxpayer, upon the request of the Franchise Tax Board when it concedes the deficiency or the refund, or on the basis of a written stipulation between the taxpayer and the Franchise Tax Board. Prior to a final decision, the taxpayer and the Franchise Tax Board may enter into negotiations at any time for settlement of an appeal.

(b) Appeals from Actions of the Franchise Tax Board: Deferrals. The Board or Board Staff may defer hearings or related proceedings, including briefing, for an indefinite period upon the filing of a written stipulation between the taxpayer and the Franchise Tax Board, or, for reasonable cause, for a specified period. The Board Proceedings Division shall notify the parties whether a deferral has been granted.

(c) Appeals from Actions of the Franchise Tax Board: Submission for Decision; Oral Hearings. After all briefs have been filed in a Franchise Tax Board matter, the appeal shall be submitted for decision on the basis of the written record unless the taxpayer requests an oral hearing.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of subsection (b) 11-19-97; effective 4-8-98.

3. Amendment of subsection (a) 3-8-01; effective 7-6-01.

5077. Allocation of Hearing Time.

The Chief, Board Proceedings Division shall allocate hearing time for each party, including response time, and reserve time for questions by the Board. Before the hearing, the Chief, Board Proceedings Division shall inform the parties and the Board in writing of the allocations. At the hearing, the Chief, Board Proceedings Division shall announce the hearing time allocations and inform the Board Chair when each of the allocations has elapsed.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

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History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5078. Scope of Hearing.

(a) An oral hearing shall be limited to consideration of the issues, values, or precise elements set forth in the petition, except that the Board may inquire into relevant new matters and afford the parties an opportunity to respond.

(b) Except in the case of appeals from actions of the Franchise Tax Board and hearings on publicly owned property, hearings before the Board under the applicable statutory provisions are not in the nature of trials or contests between adverse parties. They are meetings of the Board at which the taxpayer presents orally to the Board the taxpayer's arguments for a reduction or cancellation of a tax liability, a refund of tax previously paid, or a reduction in assessed value, or other relief.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Repealer of subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5079. Hearing Procedure: Order of Presentation; Witnesses; Presentation of Evidence; Stipulation of Facts; Official Notice; Conclusion of Hearing.

(a) This regulation applies to all Board hearings.

(b) Order of Presentation. The hearing shall ordinarily proceed in the following manner. A member of the Board Staff shall report on the record whether campaign contribution disclosure statements have been filed in accordance with the requirements of Title 18, Division 2.2, Regulation 7011, and whether any disqualifying contributions have been reported. A Board Attorney shall summarize by oral statement the issues of each case. Taxpayers shall then state their position, and present evidence as they see fit, including by means of visual aids, subject to rulings by the Board Chair. The Department shall thereafter state its position and present its evidence. Taxpayers shall then be given an opportunity to reply.

5079. (Contd.)

(c) Witnesses. The taxpayer and the Department may offer witnesses to testify. The Board encourages the parties to provide the Chief, Board Proceedings Division, with the name and address of any witness who is going to testify and a brief description of the purpose of their testimony, in advance of the hearing. In addition, the Board Chair may, at the Board Chair's discretion or upon the request of a party, direct witnesses to testify under oath or affirmation. Each party may cross-examine opposing witnesses.

Board Staff may, upon recognition by the Board Chair, question the parties, cross-examine persons called as witnesses, and explain Board Staff's view as to the validity of any argument made, the value of evidence submitted, and any other relevant matter.

(d) Presentation of Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Each party shall be permitted to comment on or respond to any affidavits or declarations submitted.

Items of documentary evidence and citations to judicial decisions issued after the briefing period has ended, and an analysis, discussion or arguments concerning the relevance of the evidence or decision, may be submitted to the Chief, Board Proceedings Division, at any time prior to or at the hearing on the matter, or at any time prior to the matter being submitted for decision if no hearing is held on the matter. The Chief, Board Proceedings Division, will send a copy of the evidence or citations and any analysis, discussion or arguments concerning the relevance of the evidence or decision to the members of the Board and to the other party. The Board or Board Staff will permit the other party an opportunity to submit a response that shall be limited to points of disagreement with the analysis, discussion or arguments.

The Board shall be liberal in allowing the presentation of evidence, but objections to the presentation of and comments on the weaknesses of evidence shall be considered in assigning weight to the evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy or unduly repetitious.

(e) Submission of Exhibits into Evidence. Any materials presented by any party which have been marked as exhibits during the matter and which the party elects to be entered into the record must be moved into evidence. The Chair will ask the parties if the exhibits are to be submitted. A party must make a motion to move the exhibits into evidence. If there are no objections, the exhibit will be entered into evidence and made a part of the record of the pending matter. If any member or party objects to the admission of evidence, the question shall be discussed and voted upon by the Board.

(f) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the case for decision, a stipulation of the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. The Board or Board Staff may require the parties to file such a stipulation.

5079. (Contd.)

(g) Official Notice. The Board may take official notice of:

(1) the records maintained by the Board;

(2) tax returns filed with the Franchise Tax Board for or on behalf of the taxpayer or an affiliated company, together with related records on file with the Franchise Tax Board;

(3) any fact which may be judicially noticed by the courts of this State. The parties may, at the hearing or through a petition for rehearing, request permission to refute any matter thus noticed.

(h) Conclusion of Hearing. That portion of the hearing in which evidence and argument are presented to the Board shall be concluded: upon a vote of the Board Members to conclude that portion of the hearing; by a declaration of the Board Chair that such portion of the hearing is concluded if there is no challenge to the Chair; or upon the making of a motion and a second that any action be taken on the matter.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsections (c), (d) and (f) and amendment of Note 3-8-01; effective 7-6-01.

5080. Burden of Proof.

Except as otherwise specifically provided by statute or in these regulations, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact. In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5080. (Contd.)

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5081. Decision and Voting Procedure: Majority Vote Requirement; Voting.

(a) General. After the hearing, the Board may decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.

(b) Majority Vote Requirements. A majority vote of the quorum is required for all decisions or actions of the Board. If there is no objection by a Board Member, a matter may be decided by unanimous consent.

(c) Voting.

(1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.

(2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Chairman may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

(3) Except as provided in subdivision (c) (2), in order to cast a vote, a Board Member, or, when authorized by statute, the deputy of the State Controller, shall be personally present at the time the roll for the vote is called.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, repealer of subsections (a) and (e); subsection relettering and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsections (c) and (c)(2) and amendment of Note 3-8-01; effective 7-6-01.

5081.2. Notice of Board Decision; Findings.

(a) Notification of Decision. All parties to a proceeding shall be notified in writing of the Board's decision.

(b) Except as provided in subdivision (c), if requested in a Property Tax petition, written findings and decision shall be rendered and sent to the petitioner.

(c) When the review, equalization and adjustment of the taxable property of a County, City, or Municipal corporation are completed, Board Staff shall mail to the assessor, the governing body and the auditor of the taxing agency, and the taxpayer a copy of the Board's findings and decision with respect to the assessment.

(d) Whether or not a Welfare Exemption hearing has been granted, a written notice of the decision shall be sent to the taxpayer and to the assessor concerned.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 744, 1841, 11341, and 38445, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading; new subsection (a); subsection relettering and amendment to Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (b) and (c) 3-8-01; effective 7-6-01.

5082. Finality of Decision; Petition for Rehearing.

(a) Except as provided in Regulation 5082.1 for appeals from actions of the Franchise Tax Board and in Regulation 5082.2 for Property Tax petitions, the decision is final 30 days from the date the official notice of Board action is mailed unless a petition for rehearing is filed pursuant to this regulation. If a petition for rehearing is timely filed, the decision is final either: (1) 30 days after the mailing of the official notice of Board action which reflects the Board's denial of the petition for rehearing; or (2) if the Board grants a rehearing, 30 days after the mailing of the official notice of Board action which reflects the Board's decision on the rehearing. Each party may file only one petition for rehearing.

(b) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 6562, 6564, 7711, 7712, 8852, 8853, 12429, 12431, 30262, 30263, 32302, 32304, 38443, 38445, 40093, 40095, 41087, 41089, 43303, 43305, 45303, 45305, 46353, 46355, 50116, 50118, 55083, 55085 and 60352, Revenue and Taxation Code.

5082. (Contd.)

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment designating first paragraph as subsection (a), new subsection (b) and amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5082.1. Appeals from Actions of the Franchise Tax Board: Formal Written Opinion; Finality of Decision; Petition for Rehearing.

(a) When the Board votes to take a matter under submission and directs that a formal written opinion be drafted, the matter is not decided until the Board votes to adopt the formal opinion or subsequently decides the matter without adopting a formal written opinion.

(b) The Board's decision is final 30 days from the date the Board decides the matter unless a petition for rehearing is filed within that period by either party. A copy of the petition for rehearing shall be mailed to the other party. If a petition for rehearing is filed, the decision is final either: (1) 30 days after the Board denies the petition for rehearing; or (2) if, the Board grants a rehearing, 30 days after the Board decides the matter on rehearing.

(c) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

Note: Authority: Section 15606(a), Government Code.
Reference: Sections 19048, 19072, 19084, 19087, 19334, 19346, and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.
3. Amendment of section heading and section 7-29-99; effective 10-31-99.

5082.2. Property Tax Petitions: Finality of Decision; Petition for Rehearing.

The decision of the Board upon a Property Tax petition is final. The Board shall not reconsider or rehear a petition.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 744, 1841, and 11341, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

5083. Fees: Filing, Subpoenas, Transcripts, and Copies; Removal of Board Records and Files.

No fee shall be charged by the Board for the filing of any paper or the issuance of a subpoena. Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code. The records and files of the Board shall not be removed from its offices for use as evidence or other purposes. Copies, including certified copies, of records which the Board is permitted by law to divulge shall, however, be furnished to litigants or other interested persons at costs as specified in Section 6257 of the Government Code and Section 1798.33 of the Civil Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 6257 and 15613, Government Code; Section 1798.33, Civil Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5085. Public Record.

Public meeting agendas, minutes of public meetings of the Board including exhibits incorporated by reference, and documents distributed to Board Members for discussion or consideration at a public meeting are public records and open to public inspection unless exempted from disclosure by state or federal law. Documents exempted from disclosure include, but are not limited to, confidential taxpayer information, and memoranda from Board Legal Staff and the Attorney General to Board Members which are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code.
Reference: Sections 952 and 954, Evidence Code; Sections 6252, 6254(b), 6254(k), 15619, and 15641, Government Code; Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section and Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

5086. Subpoenas.

Subpoenas for the attendance of witnesses or the production of books, records, accounts and papers may be issued in accordance with Section 15613 of the Government Code. Except where the subpoena is issued at the request of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit as prescribed by Section 1985 of the Code of Civil Procedure. Any affidavit filed in support of an application for a subpoena shall be served with the subpoena.

Note: Authority: Section 15606(a), Government Code.
Reference: Section 15613, Government Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

5087. Withdrawal of Exhibits.

At the conclusion of a hearing any exhibit may be withdrawn on request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy of the original thereof.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.

**ARTICLE 9. TAXPAYER BILL OF RIGHTS
REIMBURSEMENT CLAIMS****5090. Definitions. Board Hearing Procedures: Taxes Affected by this Article.**

(a) The definitions of Article 7, Regulation 5070 shall apply to this Article, and Board hearings on claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7 commencing with Regulation 5070, except as otherwise noted.

5090. (Contd.)

(b) This Article applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax—

Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401–19802

| Business and Property Taxes—

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001–32557

| Ballast Water Management Fee
Public Resources Code Sections 71200–71271;
Revenue and Taxation Code Sections 44000–44008, 55001–55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001–43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001–30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001–60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001–41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001–40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001–43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001–45984

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1–9;
Revenue and Taxation Code Sections 7301–8405

| Natural Gas Surcharge
Public Utilities Code Sections 890–900;
Revenue and Taxation Code Sections 55001–55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001–43651

5090. (Contd.)

Oil Spill Response, Prevention and Administration Fees
Revenue and Taxation Code Sections 46001–46751

Private Railroad Car Tax

California Constitution Article XIII, Section 19;

Revenue and Taxation Code Sections 11201–11702

Sales and Use Tax

(including State-administered local sales, transactions and use taxes)

Revenue and Taxation Code Sections 6001–7279.6

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431–437, 38101–38908

Tire Recycling Fee

Public Resources Code Sections 42860–42895;

Revenue and Taxation Code Sections 55001–55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101–50162

Use Fuel Tax Law

Revenue and Taxation Code Sections 8601–9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New article 9 (sections 5090–5095) and section adopted 11-19-97; effective 4-8-98.
2. Amendment of subsection (b) 7-29-99; effective 10-31-99.
3. Amendment of subsection (b) and Note 3-08-01; effective 7-6-01.

5091. Eligible Claims.

Only those expenses which were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are “related to a hearing before the board” and reimbursable only if the claimant sought Board review of an unfavorable Decision

5091. (Contd.)

and Recommendation issued by the Appeals Section. With the exception of expenses incurred in cases resolved through the Franchise Tax Board's Review and Write (RW) procedure, all expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board".

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-08-01; effective 7-6-01.

5092. Reasonable Fees.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Change without regulatory effect amending Note filed 6-11-01.

5093. Claim Procedure.

(a) Claim Form. The claim shall be filed with the Chief, Board Proceedings Division, on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98) which is hereby incorporated by reference.

(b) One Year Filing Deadline. The completed claim form shall be filed within one year of the date the decision of the Board becomes final. At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of a completed claim form may be granted upon a showing of good cause if the written request is filed with the Chief, Board Proceedings Division, prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant shall be granted 30 days additional time to complete the claim form.

5093. (Contd.)

(c) Staff Statement. Within 60 days of filing of the claim, Board Staff and, when applicable, Franchise Tax Board Staff, shall submit a statement in response to the claim. At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of a staff statement may be granted upon a showing of good cause if a written request is filed with the Chief, Board Proceedings Division, before the scheduled due date of the staff statement.

(d) Claimant Response. The staff statement(s) shall be mailed to the claimant, who shall be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. At the discretion of the Chief, Board Proceedings Division, extension of time for the filing of a response may be granted upon a showing of good cause if the written request for extension is filed with the Chief, Board Proceedings Division, before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board staff or Franchise Tax Board Staff may be given an additional 30 days to respond to the new material.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of subsection (a) 7-29-99; effective 10-31-99.
3. Amendment of subsections (c) and (d), repealer of subsection (e) and amendment of Note 3-08-01; effective 7-6-01.

5094. Oral Hearing on Reimbursement Claim.

After the submission of documents as set forth in Regulation 5093, the claim shall be scheduled for oral hearing before the Board. The claimant and, when applicable, the Franchise Tax Board shall receive 60 days notice of the hearing date and time, and the procedures shall be governed by Article 7. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

5094. (Contd.)

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 7-29-99; effective 10-31-99.
3. Amendment of section and Note 3-08-01; effective 7-6-01.

5095. Notice of Decision.

Whether or not an oral hearing is held on the claim, the Board shall send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding the provisions of Article 7, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement shall be available as a public record for at least 10 days prior to the effective date of the award except appeals from actions of the Franchise Tax Board which shall be available as a public record for at least 10 days prior to the effective date of the determination.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.
Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-08-01; effective 7-6-01.

5200. Annotations.

Reference: Section 15606(c) and (e) Government Code; sections 6596, 7051, 7084, 8262, 9262, 13170, 30458.2, 32462, 40202, 41162, 43513, 45858, 46613, 50156.2, 55323, Revenue and Taxation Code and Sales and Use Tax Regulation 1705, Relief from Liability.

(a) DEFINITIONS. For purposes of this regulation, the following definitions shall apply:

(1) “Annotations” are published in either the Business Taxes Law Guide or the Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.

(2) “Legal ruling of counsel” means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel’s designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff.

(3) “Current Legal Digest” means a publication containing drafts of new annotations proposed to be added, and/or annotations proposed to be amended or deleted in the Business Taxes Law Guide or Property Taxes Law Guide.

(4) “Tax” means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board or any tax over which the Board has oversight or advisory responsibility.

(5) “Taxpayer” means person liable for the payment of any tax as the term tax is defined above.

(6) “Board” means the State Board of Equalization.

(b) ELEMENTS OF ANNOTATED LEGAL RULINGS OF COUNSEL. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

- (1) A summary of pertinent facts,
- (2) An analysis of the issue(s),
- (3) References to any applicable statutes, regulations, or case law, and
- (4) A conclusion supported by the analysis of the issue(s).

(c) USE OF ANNOTATIONS.

(1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.

(2) Annotations are a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and Board regulations as applied by the Board staff to specific factual situations in legal ruling of counsel.

5200. (Contd.)

(3) Except as provided in Regulation 1705, following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest and penalty.

(d) PUBLICATION OF ANNOTATIONS.

(1) Before new annotations are added, or existing annotations are amended or deleted, the Board shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.

(2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to the Board's Legal Division.

(e) REQUEST FOR DEPUBLICATION OF AN ANNOTATION. An annotation published in the Business Taxes Law Guide or the Property Taxes Law Guide believed to be in error and/or appearing to conflict with another annotation may be depublished using the following procedure:

(1) A request for depublication of an annotation shall be directed to the Chief Counsel.

(2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.

(3) If a request for the depublication of an annotation is approved by the Chief Counsel, the Board shall publish the proposed depublication in a Current Legal Digest.

(4) If a request for the depublication of an annotation is denied, the requestor may bring the request before the Board's Business Taxes or Property Taxes Committee for consideration.

(f) COPIES OF LEGAL RULINGS OF COUNSEL. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information excised, that has been annotated in the Business Taxes Law Guide or Property Taxes Law Guide. Requests may be directed to the Board's Legal Division.

History: Adopted May 6, 2000, effective July 27, 2000.